

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

MARTINEZ AUTO REPAIR

V

NORTHERN ILLINOIS GAS COMPANY

d/b/a NICOR GAS COMPANY

Complaint a to billing/charges
in Chicago, Illinois.

No. 10-0743

Chicago, Illinois

June 21, 2011

Met pursuant to notice at 10:00 a.m.

BEFORE :

MR. JOHN RILEY, Administrative Law Judge.

APPEARANCES:

MR. PAUL PADRON
1844 Ferry Road, Suite 7W
Naperville, Illinois 60563
appeared for the Respondent.

SULLIVAN REPORTING COMPANY, by
Teresann B. Giorgi, CSR

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2							Re-	Re-	By
3	<u>Witnesses:</u>	<u>Dir.</u>	<u>Crx.</u>	<u>dir.</u>	<u>crx.</u>		<u>dir.</u>	<u>crx.</u>	<u>Examiner</u>
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9		<u>E</u>	<u>X</u>	<u>H</u>	<u>I</u>	<u>B</u>	<u>I</u>	<u>T</u>	<u>S</u>
10	<u>APPLICANT'S</u>	<u>FOR</u>	<u>IDENTIFICATION</u>				<u>IN</u>	<u>EVIDENCE</u>	
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1 JUDGE RILEY: Pursuant to the direction
2 of the Illinois Commerce Commission, I call
3 Docket 10-0743. This is a complaint by Martinez
4 Auto Repair versus Northern Illinois Gas Company
5 d/b/a Nicor Gas Company, as to billing and charges
6 in Rockford, Illinois.

7 And Ms. Ortmann, you are again
8 appearing on behalf -- you're not an attorney, but
9 you are appearing on behalf of the Martinez Auto
10 Repair?

11 MS. ORTMANN: Yes, I am.

12 JUDGE RILEY: And you are employed by Martinez?

13 MS. ORTMANN: Yes, I am.

14 JUDGE RILEY: And you do have their permission
15 to speak for them.

16 MS. ORTMANN: Yes, I do.

17 JUDGE RILEY: And, Mr. Padron, would you enter
18 an appearance for Nicor.

19 MR. PADRON: Paul Padron, P-a-d-r-o-n, for Nicor
20 Gas, 1844 Ferry Road, Suite 7W, Naperville, Illinois
21 60563. The phone number is 630-388-3660.

22 And with me is Carlton Coleman from

1 our Customer Relations Department.

2 JUDGE RILEY: All right. Thank you.

3 Can the parties hear each other okay.

4 MS. ORTMANN: Yes, I can.

5 JUDGE RILEY: All right. Well, I said that we
6 were going to see where we stand. Where do we
7 stand?

8 Mr. Padron, I have something in here
9 about a cancelled check running about \$721?

10 MR. PADRON: Yeah. I think where we were last
11 time, and, Diana, you tell me if you remember
12 differently.

13 But where we were -- or where Nicor
14 was is we discovered that NCO had inadvertently
15 credited the account twice for \$500 each. So what
16 we found was is that the account was inadvertently
17 credited \$1,000 by NCO. You were of the opinion
18 that you had paid, maybe not the entire thousand but
19 a portion of that thousand --

20 MS. ORTMANN: Uh-hum.

21 MR. PADRON: -- and you were going to provide us
22 with copies of either cancelled checks, cashed

1 checks or a bank statement or something to that
2 regard.

3 MS. ORTMANN: Yes. The last thing that we had
4 discussed is that I was to provide two copies of the
5 cancelled checks that would total the \$721 and the
6 whole thing would be done. And, in fact, I do have
7 copies of them. I can fax them over to you right
8 now, if you'd like me to.

9 MR. PADRON: Yeah, you can fax it -- I mean,
10 obviously I'm here at the ICC, so --

11 MS. ORTMANN: Okay.

12 MR. PADRON: -- and after I'm done here I have
13 another legal matter I have to attend, so I'm not
14 even going to be in the office until tomorrow
15 morning.

16 MS. ORTMANN: Okay.

17 MR. PADRON: You can fax me those checks and
18 I'll be happy to look at them and go from there.
19 You know, at this point I don't know what else to do
20 except for say, Send them to me and get another
21 date.

22 MS. ORTMANN: Okay. I just got them or I would

1 have sent them before.

2 JUDGE RILEY: No, I understand that.

3 MS. ORTMANN: Is there like a fax machine or
4 something that I could send them to the ICC office
5 or --

6 JUDGE RILEY: Could you send them right away?

7 MS. ORTMANN: Yeah, I could send them right now.

8 JUDGE RILEY: Okay. The number is Area Code
9 312-814-7289.

10 MS. ORTMANN: It's 312-814-7289?

11 JUDGE RILEY: Right.

12 MS. ORTMANN: And do you want me to do a cover
13 sheet or should I just send them?

14 JUDGE RILEY: Do a quick cover sheet, but put my
15 name on it. Put Judge Riley on it so the office
16 will know that it's coming to me.

17 MS. ORTMANN: Okay.

18 JUDGE RILEY: And I'll be by the fax machine
19 waiting.

20 MS. ORTMANN: Okay. Give me one second and let
21 me send it out.

22 JUDGE RILEY: Okay. I'll be at the machine.

1 We'll go off the record.

2 (Whereupon, a discussion
3 was had off the record.)

4 JUDGE RILEY: Back on the record.

5 Mr. Padron, I have provided you with
6 copies of the faxed cancelled checks --

7 MR. PADRON: That's right. Thank you.

8 JUDGE RILEY: -- from the Complainant.

9 MR. PADRON: That's right. Thank you, Judge.

10 And they mirror payments that we show
11 on our financial summary for -- between March and
12 May of 2007. So there's no doubt that Nicor
13 received these payments.

14 As I was explaining to Ms. Ortmann,
15 the problem is that it still doesn't alleviate or
16 fix the problem of NCO inadvertently crediting the
17 account \$1,000.

18 I know from previous notes here that I
19 have, when we've been here with the ICC, that
20 there's a large amount of late fees that are
21 included in our balance. And when I say that let me
22 just speak directly to the financial summary, Diana,

1 that last arrear entry of 5-8-07, where it shows a
2 payment of \$51.70, it shows a current balance of
3 \$1,309.08.

4 MS. ORTMANN: Yes.

5 MR. PADRON: And that's what Nicor, as well as
6 NCO -- now, NCO -- they realize that they made the
7 mistake and they have corrected their account. But
8 it doesn't change the path. It doesn't fix the
9 problem that they sent you a letter saying, Pay the
10 721.56 and you're done. And you did it. And then
11 they sent a letter saying, Thank you, you're paid in
12 full.

13 MS. ORTMANN: Yeah.

14 MR. PADRON: They basically -- what they did
15 was, they turn around and realize they made a
16 mistake and corrected their account. So their
17 account right now, as it stands, and I believe I
18 sent you a copy of their account screen shot for
19 your account, also shows a current balance of
20 \$1,309.08. Of that 1,309, \$420.57 are late fees.

21 MS. ORTMANN: Okay.

22 MR. PADRON: So the balance of what Martinez

1 Auto Body actually owes in terms of actual gas used
2 and in terms of actual service charges for the gas
3 is \$888.51, that's the actual balance. And that's
4 really what I feel is the fair amount owed to Nicor.

5 Now, the question is is how much of it
6 is your responsibility and how much of it is NCO's
7 responsibility because they're the ones who made the
8 error?

9 MS. ORTMANN: Can I say something.

10 MR. PADRON: Sure.

11 MS. ORTMANN: Correct me if I'm wrong, but the
12 last time that we spoke the thing that we settled on
13 is if I were to provide these two copies of these
14 two checks from the bank, then the whole thing would
15 be handled, is that not correct?

16 MR. PADRON: I honestly --

17 MS. ORTMANN: Because that was the agreement
18 that we made with the Judge, that if I were to
19 provide these two copies, then that would show that
20 I proved the \$721 and we would be done.

21 JUDGE RILEY: Ms. Ortmann, I do have that in my
22 notes. I have not read the transcript of the prior

1 session, but I don't believe it constituted a formal
2 agreement, if that's what you're alluding to.

3 MS. ORTMANN: Oh, I was under the impression
4 that all I have to do is get these and prove that I
5 did pay that amount that showed what we owed and I
6 was done.

7 MR. PADRON: I don't believe that we said it
8 would be settled. We just wanted you to show proof
9 of the payments --

10 MS. ORTMANN: Oh, okay.

11 MR. PADRON: -- because that's what was in
12 dispute.

13 And just to correct -- I mean, just to
14 be precise. I don't know that the payment itself is
15 in dispute. I believe you that you paid, obviously,
16 you sent us the cashed checks. Obviously, you paid
17 the 721.56.

18 The problem is that from what NCO is
19 telling you, you should be done now and --

20 MS. ORTMANN: Yes.

21 MR. PADRON: -- they made an error of crediting
22 you the \$1,000. So now the question is how do we go

1 from here.

2 MS. ORTMANN: Okay.

3 MR. PADRON: Nicor is still owed -- if we remove
4 the last fees, which is absolutely fair and
5 absolutely reasonable, the only amount owed to Nicor
6 for the actual gas use by Nicor -- by Martinez Auto
7 Body is \$888.51.

8 And as far as I am concerned, I don't
9 want you to pay for something you don't owe, but I
10 don't believe you should walk from something you do
11 owe.

12 MS. ORTMANN: I don't really feel like we walked
13 from anything.

14 MR. PADRON: And at the same time, I understand
15 your frustration because NCO made a mistake, and it
16 happens. These sort of things happen. People get
17 credited things -- I was just reading the other day
18 an article about a guy who received a tax refund
19 from the IRS for \$100,000, and it was a mistake,
20 and spent it and now he's spending some years in
21 jail. But those sort of things happen.

22 And what I'm hopeful -- what I would

1 like to do is, I would like to see NCO pay
2 something, some portion of the 888.51. And the
3 problem I'm having with NCO is I'm not getting
4 anywhere with them. And you'd think -- for NCO,
5 \$888 is not a lot of money, but for a small business
6 or for somebody like me, \$888 is a lot of money.
7 And we're spending time and resources here with the
8 ICC.

9 So what I'd really like to do is I'd
10 like to get NCO to pony up some amount of the 888,
11 if not all of it, something of it, because they
12 obviously made the mistake.

13 MS. ORTMANN: Exactly. And I think they should
14 be held responsible for it.

15 MR. PADRON: But the reality is, Diana, even
16 though they made the mistake, they are our
17 independent contractor. They're our third-party
18 contractor. They are not a party to this proceeding
19 right now. Right now the only parties that
20 Judge Riley is worried about is Martinez Auto Body
21 and Nicor Gas.

22 MS. ORTMANN: Okay.

1 MR. PADRON: So if -- there's no doubt you were
2 told you owed 721.56 and you're account would be
3 paid in full. You paid it. If the ICC or
4 Judge Riley were to find that you -- you know, that
5 it was reasonable -- I don't know -- what I'm trying
6 to get at is if we were to have an evidentiary
7 hearing and it was shown that you paid what you
8 thought you owed, then I don't know -- you know,
9 this would then become a matter between Nicor and
10 NCO.

11 MS. ORTMANN: Okay. And I kind of agree with
12 that. But you're right, if I were to go in court
13 and present the documents, legally I did uphold to
14 the agreement that we made. And I understand that
15 NCO is not like abiding to -- take responsibility
16 for anything, but they were legally representing you
17 and they were collecting this money from us, so I
18 think they should be held responsible for the
19 balance.

20 JUDGE RILEY: And Mr. Padron is correct that we
21 don't have any authority or jurisdiction -- the
22 Commission has no authority or jurisdiction over

1 NCO.

2 MR. PADRON: Right.

3 MS. ORTMANN: But you can take them to court as
4 well, can't you?

5 JUDGE RILEY: No, the Commission could not. No.

6 MR. PADRON: No --

7 MS. ORTMANN: But Nicor Gas could, couldn't
8 they?

9 MR. PADRON: Well, I mean -- I'm probably
10 telling you more than you need to know, but we have
11 indemnity provisions in our contracts with NCO. So
12 if Nicor is to lose any money or have something like
13 this occur, NCO will make this whole -- will make
14 Nicor whole.

15 MS. ORTMANN: Then they would be the balance of
16 \$888.

17 MR. PADRON: Right.

18 But, again, my hope was to avoid
19 having an evidentiary hearing. I would rather just
20 deal with NCO and settle this thing because we're
21 wasting a lot of time and money by having formal
22 hearings and statuses and so forth, but I'm not

1 getting a lot of cooperation from NCO.

2 So I don't know -- maybe the best idea
3 is -- I'm not sure where to go from here, your
4 Honor.

5 JUDGE RILEY: Are you saying, you don't think
6 there is going to be any remedy through NCO?

7 MR. PADRON: Well, this is where we're at. As
8 it stands, Carlton and I were working with a
9 representative from NCO and she was the one who
10 provided us with the accounting. She was the one
11 who provided us with the screen shots of your
12 account at Martinez Auto Body. And it was through
13 those documents that she gave us -- that I forwarded
14 to you, Diana -- it was through those documents
15 where I, along with Carlton and along with the
16 representative from NCO, having a conference call,
17 discovered that they inadvertently credited you a
18 thousand dollars.

19 From there I haven't gotten anywhere
20 with them. And what I have done is, I have -- I am
21 in the process right now of trying to get in touch
22 with someone else from NCO who I hope will have more

1 ability to settle this thing and have a better
2 idea -- understanding of the whole picture, meaning
3 we're wasting time and money and this is something
4 that -- you know, I don't know if they should pay
5 the whole thing, if they do find -- but in my
6 opinion they should certainly pony up something.

7 So I'm in the process right now of
8 trying to reach that person and that's where I'm at.
9 I have not yet reached that person.

10 JUDGE RILEY: Well, I'm not adverse to granting
11 more time in this matter to see if there isn't some
12 partial remedy at least to be obtained from --
13 dealing with NCO.

14 I did want to advise Ms. Ortmann that
15 if this does go to evidentiary hearing the parties
16 are going to have to appear in person and that means
17 coming in from Rockford for the hearing.

18 Mr. Martinez, who had signed the complaint, would be
19 obligated to appear. So I think if there's any
20 possibility of settling these matter, it would be
21 much preferred.

22 MR. PADRON: And that's my preference,

1 your Honor. I don't want them to have -- I don't
2 want Diana or her father to have to come from
3 Rockford because of a mistake that NCO made.

4 So, Diana --

5 MS. ORTMANN: Can I make a suggestion.

6 JUDGE RILEY: Go ahead.

7 MS. ORTMANN: So that none of the money is lost
8 as far as like the actual service itself, would you
9 be able to reapply some of the late charges?
10 Because there's one that I'm looking at from the
11 statement that you sent from 8-25-06, that alone was
12 \$345, which is just late charges.

13 MR. PADRON: 8-25-06, the late payment charge of
14 345.51?

15 MS. ORTMANN: Yeah.

16 MR. PADRON: Yeah, that's part of the 420 --
17 when I mentioned that of the total balance that we
18 show owing, the \$1,309.08, we have a total of
19 \$420.57 in late fees. That 345.51 is part of that
20 420, along with the 55.91 from 3-8-06 --

21 MS. ORTMANN: Okay.

22 MR. PADRON: -- along with the \$15 from 2-8-06

1 and along with the 4.15 from 1-5-06. You add those
2 4 together and you get 420.57.

3 MS. ORTMANN: Oh, okay.

4 MR. PADRON: And that's -- the 420.57 Nicor is
5 going to waive regardless. That's going to come off
6 no matter what. Whether or not NCO owns up to the
7 fact that they made a mistake or not, I'm not going
8 to hold Martinez Auto Body responsible for that 421
9 for their mistake.

10 MS. ORTMANN: Okay.

11 MR. PADRON: So, really, really, the only thing
12 we're talking about is the \$888.51.

13 MS. ORTMANN: Okay.

14 JUDGE RILEY: What I would suggest at this
15 point, as I said, I'm not adverse to granting more
16 time, I'd like to put this out for another 30 days
17 to give you one more crack at NCO.

18 MR. PADRON: That's fine.

19 JUDGE RILEY: If you can get through to them and
20 see if they'd take some of the responsibility for
21 the misapplication that --

22 MR. PADRON: Diana, does that sound good to you?

1 MS. ORTMANN: That's fine.

2 MR. PADRON: Okay.

3 JUDGE RILEY: Okay. Why don't we do that. But
4 I also note that this matter has been pending since
5 December, the end of December and we're going to
6 have to come to a conclusion one way or the other,
7 either through a hearing or through settlement.

8 MR. PADRON: Very good.

9 MS. ORTMANN: Yeah.

10 JUDGE RILEY: And I would like to correct that
11 remark that I made earlier. I did read the
12 transcript from the prior session that we had on
13 May 11. I did not memorize it. And I don't have a
14 copy of that transcript with me here, so I can't
15 double-check the accuracy of my notes. But I
16 thought that I had written down -- I thought that I
17 had understood at the time that -- as Ms. Ortmann
18 also understood, that if she produced a cancel check
19 for 721, that would be roughly dispositive of the
20 matter, obviously, that's not the case.

21 So here's where we are, today is the
22 21st of June and, obviously, the 21st of July is

1 30 days.

2 MR. PADRON: I'm fine for the 21st of July.

3 JUDGE RILEY: That's a Thursday.

4 MS. ORTMANN: I am, as well.

5 JUDGE RILEY: All right. Now my next question
6 would be, do we want to do this for another status
7 or should we just set it for an evidentiary hearing
8 right now --

9 MR. PADRON: I --

10 JUDGE RILEY: -- because you should know within
11 the next 30 days whether or not you're going to be
12 able to get any satisfaction from NCO.

13 MR. PADRON: I should.

14 JUDGE RILEY: Why don't we give it an extra
15 week.

16 MR. PADRON: All right.

17 JUDGE RILEY: Take it right to the end of July
18 and that gives a full 5 weeks -- 5 to 6 weeks --

19 MR. PADRON: Okay.

20 JUDGE RILEY: -- to try to work something out.
21 And if that doesn't --

22 MR. PADRON: And you know what, Judge, I'm

1 actually here on July 28th for another matter at
2 11:00 o'clock.

3 JUDGE RILEY: You'll be here at 11:00?

4 MR. PADRON: Yeah, for another matter. So if
5 you want to set this for July 28th at 10:00 that's
6 fine.

7 JUDGE RILEY: It happens I have a matter up at
8 10:00 o'clock.

9 MR. PADRON: Okay.

10 JUDGE RILEY: What I was going to suggest do it
11 at 1:30.

12 MR. PADRON: That's fine. I can get some lunch
13 and hang out here. And that's assuming we even have
14 to have --

15 JUDGE RILEY: Exactly, if it does come to that.

16 Ms. Ortmann, that would also give you
17 and Mr. Martinez time to get in from Rockford.

18 MS. ORTMANN: Okay.

19 JUDGE RILEY: Is July 28th good for you?

20 MS. ORTMANN: Yeah, that's fine.

21 JUDGE RILEY: All right. Then let's leave it at
22 that.

1 And I will set that for a hearing and
2 suggest that the parties endeavor --

3 MS. ORTMANN: Let me make sure I understand
4 everything.

5 So if we did not settle before then,
6 I'm going to have to take my dad out to Chicago?

7 JUDGE RILEY: Right, that's where the hearing
8 will be held. It would be the offices of the
9 Commerce Commission. The address is contained in
10 the notice.

11 MS. ORTMANN: Okay.

12 JUDGE RILEY: It's 160 North LaSalle Street.

13 MS. ORTMANN: I'm hoping that they do something
14 then.

15 MR. PADRON: Yeah, and --

16 MS. ORTMANN: I really don't want to close down
17 to go out there.

18 MR. PADRON: No, and I don't want to have to do
19 this either. We know where the mistake was made.
20 So let me try again -- I'm trying a different avenue
21 to speak with someone from NCO.

22 MS. ORTMANN: Okay.

1 MR. PADRON: So let me see if this works. We
2 know where the mistake was made, so let's see --
3 Let's see what NCO ends up with. I don't want to
4 have you and your father have come out here for a
5 mistake they made, either.

6 MS. ORTMANN: No, because then we have to close
7 down our business to go out there.

8 MR. PADRON: Right.

9 JUDGE RILEY: Well, we'll leave it at that then.

10 MR. PADRON: Okay.

11 JUDGE RILEY: I'll continue this matter to
12 July 28 at 1:30 p.m. for hearing. And I'll suggest
13 that the parties endeavor to work this matter out in
14 the meantime.

15 MS. ORTMANN: Okay.

16 JUDGE RILEY: See what satisfaction you can get
17 from NCO.

18 MR. PADRON: Very good.

19 JUDGE RILEY: Thank you very much.

20 (Whereupon, the above-entitled
21 matter was continued to
22 July 28, 2011, at 1:30 p.m.)